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6 Attorneys for Plaintiff
BAY AREA PAINTERS AND TAPERS
7 PENSION FUND, et al.

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10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12

13 BAY AREA PAINTERS AND TAPERS Case No.: 07-3344 PJH
PENSION FUND, BAY AREA PAINTERS
14 AND TAPERS HEALTH FUND, BAY AREA **COMPLAINT**
PAINTERS AND TAPERS JOINT
15 APPRENTICESHIP TRAINING FUNDS,
AND THEIR JOINT BOARDS OF
16 TRUSTEES; LES PROTEAU AND CHARLES
DEL MONTE, AS TRUSTEES; AND
17 DISTRICT COUNCIL 16 OF THE
INTERNATIONAL UNION OF PAINTERS
18 AND ALLIED TRADES;

19 Plaintiffs,

20 v.

21 CRYSTAL NICOLE THOMAS, individually
and dba CALIFORNIA PROFESSIONAL
22 PAINTING,

23 Defendants.
24

25 Parties

26 1. The Bay Area Painters and Tapers Pension Fund ("Pension Fund"), the Bay Area
27 Painters and Tapers Health Fund ("Health Fund"), and the Bay Area Painters and Tapers
28

1 Apprenticeship Training Fund ("Apprenticeship Fund") are employee benefit plans as defined in
2 the Employee Retirement Income Security Act of 1974 ("ERISA") § 3(3), 29 U.S.C. § 1002(3).
3 The Joint Boards of Trustees of those Funds are the Funds' named fiduciaries under ERISA
4 § 402(a), 29 U.S.C. § 1002(a). Les Proteau is the Chairman and Charles Del Monte is the
5 Secretary of the Joint Boards of Trustees of the Plaintiff Funds and are fiduciaries of those Funds.
6

7 2. District Council 16 of the International Union of Painters and Allied Trades,
8 ("Union") is a labor organization as defined in § 2(5) of the National Labor Relations Act
9 ("NLRA"), 29 U.S.C. § 152(5).

10 3. Crystal Nicole Thomas and California Professional Painting are employers by
11 virtue of ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2). They are
12 referred to herein as "Defendants".
13

14 4. The Pension Fund, Health Fund, Apprenticeship Funds, and their fiduciaries are
15 herein referred to as "ERISA Plaintiffs."

16 Jurisdiction

17 5. Jurisdiction exists in this Court over the claims asserted by the ERISA Plaintiffs by
18 virtue of ERISA § 502, 29 U.S.C. § 1132, in that the ERISA Plaintiffs seek to enforce the
19 provisions of ERISA and the terms of their plans, seek to enjoin the acts and practices which
20 violate ERISA, seek equitable relief to redress such violations, and seek all other appropriate relief
21 under ERISA.
22

23 6. Jurisdiction exists in this Court over all the claims by virtue of Labor Management
24 Relations Act ("LMRA") § 301, 29 U.S.C. § 185, in that the plaintiffs seek to enforce the terms
25 and conditions of a collective bargaining agreement between the employer and a labor
26 organization.
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1 Plaintiff Funds, the Union, and the Funds. Defendants have failed and refused to make payment
2 of any amounts due claimed herein, as required by the Bargaining Agreement.

3 16. Defendants have a statutory duty to make the required payments timely to the
4 ERISA Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and by failing to make such timely
5 payments has violated the law.

6 17. Defendants have a contractual duty under the Bargaining Agreement to timely
7 make the required contributions, liquidated damages and interest to the ERISA Plaintiffs and the
8 Funds, and to timely make the required payment of union dues to the Union. By failing to make
9 such timely payments as required, defendants have breached said duty.

10 18. Defendants' failure and refusal to timely submit the aforesaid reports and payments
11 as alleged herein was at all times, and still is, willful. Said refusal is unjustified and done with
12 malicious intent. Defendants' failure to timely make such payments in compliance with the
13 Bargaining Agreement has reduced the corpus of the ERISA Plaintiff funds and operating ability
14 of the Union, thereby impairing their ability to pay or provide benefits to members and
15 beneficiaries, and thereby causing harm to all ERISA Plaintiffs funds and to the Union.
16 Defendants' obligations pursuant to the Bargaining Agreement are continuing obligations;
17 defendants continue to breach said Bargaining Agreement by failing and refusing to timely pay
18 monies due thereunder to the Plaintiff Funds and the Union. Plaintiffs are informed and believe,
19 and therefore allege, that defendants will continue to willfully refuse to make said payments unless
20 ordered by this Court to comply.

21 19. Plaintiffs are without an adequate remedy at law and will suffer continuing and
22 irreparable injury, loss and damage unless defendants are ordered specifically to perform all
23 obligations required on defendants' part to be performed under ERISA, 29 U.S.C. §§ 1101-1381,
24 the LMRA, 29 U.S.C. §§ 141-197, the Bargaining Agreement, and the governing documents of
25

1 the Plaintiffs Funds referred to therein, and are restrained from continuing to refuse to perform as
2 required thereunder.

3 Prayer

4 WHEREFORE, Plaintiffs pray as follows:

5 1. For a judgment against defendants as follows:

6 a. For unpaid contributions for hours worked as specified above and thereafter
7 through judgment;

8 (1) To the ERISA Plaintiffs, in accordance with ERISA Section
9 502(g)(2)(A), 29 U.S.C. Section 1132(g)(2)(A) and the Bargaining Agreement;

10 (2) To the Union in accordance with the Bargaining Agreement.

11 b. Liquidated damages on late paid and unpaid contributions in an amount
12 provided for under the Bargaining Agreement and governing documents of the Plaintiff Funds and
13 with respect to the ERISA Plaintiffs, ERISA Section 502(g)(2)(c), 29 U.S.C. Section
14 1132(g)(2)(c).
15

16 c. Interest on late paid and unpaid contributions, dues and liquidated damages
17 which become a part thereof, at the rates set in accordance with the Bargaining Agreement, the
18 governing documents of the Plaintiff Funds and the ERISA Section 502(g)(2)(B), 29 U.S.C.
19 Section 1132(g)(2)(B), with respect to the ERISA Plaintiffs, and the applicable legal rate with
20 respect to dues or where otherwise appropriate.
21

22 2. For any additional contributions and dues payable to plaintiffs and the Bargaining
23 Plans as third party beneficiaries of the Bargaining Agreement at time of judgment, plus interest
24 and liquidated damages as above provided and in accordance with the Bargaining Agreement, the
25 governing documents of the Plaintiff Funds, and with respect to the ERISA Plaintiffs, ERISA
26 Section 502(g)(2), 29 U.S.C. Section 1132(g)(2).
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1 3. ERISA Plaintiffs' reasonable attorneys' fees and costs of this action in accordance
2 with ERISA § 502(g)(2)(D), 29 U.S.C. § 1132(g)(2)(D); and in accordance with the collective
3 bargaining agreement for all Bargained Plans, and with LMRA Section 301, 29 U.S.C. § 185 for
4 all plaintiffs.

5 4. For an order enjoining defendants from violating the terms of the Bargaining
6 Agreement and the governing documents referred to therein, from disposing of any assets until
7 said terms have been complied with, and from continuation or operating of defendants' business
8 until said terms have been complied with.

9 5. That the Court retain jurisdiction of this case pending compliance with its orders.

10 6. For such other and further relief as the Court may deem just and proper.

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13 Dated: June 25, 2007

SALTZMAN & JOHNSON LAW CORPORATION

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16 By: _____/s/_____

17 Michele R. Stafford
18 Attorneys for Plaintiffs
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